

**REMARKS**

In the Response, pending claims 1-10, 12-20, 23-34 and 36-47 are unchanged from the previous response filed on July 19, 2007. The listing of claims reflects all previous amendments made to claims 1-2, 9, 12, 16, 19, 23-27, 31-33, and 37-47 with respect to the original claims. Applicants respectfully request allowance of all the pending claims.

**Oath/Declaration**

In the previous Office action (dated March 30, 2007) the original reissue oath/declaration, a copy of which is attached for your reference at Appendix A, was rejected for failing to identify at least one error which is relied upon to support the reissue application and for failing to contain a statement that all errors being corrected in the reissue application up to the time of filing of the oath/declaration arose without deceptive intent. During a telephone interview conducted April 16, 2007 with the attorney of record, Gayle A. Bush, it was agreed to by the Examiner that a statement that the errors “arose without any deceptive intention on the part of the applicant” was included in the declaration at the top of page 3 and sufficient to overcome the rejection. The Examiner recommended that a supplemental declaration be submitted that identifies at least one specific error in the original patent. The supplemental reissue oath/declaration, a copy of which is attached for your reference at Appendix B, was filed to meet this recommendation.

In the pending Office action, the Examiner indicated that the supplemental reissue oath/declaration is defective because it fails to contain a statement that all errors are being corrected in the reissue application “up to the ‘time’ of filing of the oath/declaration arose without any deceptive intention on the part of the applicant.” Applicants would like to point out that page 2 of the supplemental oath/declaration includes a statement that “[E]very error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration submitted in this application up to the filing of this oath/declaration **arose without any deceptive intention on the part of the applicant.**” (emphasis added). It should be noted that the bold language is identical to the language previously agreed to by the Examiner and included in the U.S. Patent and Trademark Office’s form (PTO/SB/52) for a Reissue Application Declaration by the Assignee. Therefore, the rejection of the supplemental oath/declaration as being defective should be withdrawn.

To facilitate allowance of this application, Applicants submit the attached Second Supplemental Declaration by the Assignee for Reissue Patent Application, which adds the phrase “time of” to the statement on deceptive intent. The Examiner is specifically directed to the section starting near the top of page two. The Second Supplemental Declaration overcomes the rejection to the reissue oath/declaration, and therefore, the rejection should be withdrawn.

**Claim Rejections - 35 U.S.C. § 251**

The Examiner rejects claims 1-10, 12-20, 23-34, and 36-47 under 35 U.S.C. §251 as being based upon a defective reissue declaration. Applicants submit that the newly submitted Second Supplemental Declaration corrects previous defects and respectfully request the rejection based on a defective declaration be withdrawn.

**Claim Rejections - 35 U.S.C. §112(1)**

The Examiner rejects claims 1-8, 25 and 47 for failing to comply with the written description requirement. Applicants submit that in light of the following remarks that the claims as currently presented include no new matter and are in condition for allowance.

The Examiner identifies three specific phrases and terms as having no support in the original disclosure. Applicants hereby provide an explanation of the support in the original disclosure of the patent for the amended claims. With respect to the phrase “of length of the manifold”, a manifold is disclosed in the original disclosure as element number 96, at least at Figs. 1-2 and 4-5 and at column 11, lines 61-62. In particular, Figs. 1 and 2 illustrate the manifold 96 as having a length and the specification discloses “the manifold 96 can extend axially the length of the blancher 20.” As seen in Figs. 1-2 and 4-5 and disclosed at least at column 9, lines 45-55, each manifold 96 includes a plurality of pairs of orifices 94 from which directed flows, jets, or streams of a fluid are discharged into the tank 24. Further, the specification of the present application also discloses that in one embodiment liquid is discharged from each orifice at a flow rate of 20 gpm. (See column 11, lines 3-11). Therefore, there is support in the original disclosure for “a length of the manifold” as set forth in claim 1.

With respect to the phrase “lengthwise direction”, a manifold oriented in a lengthwise direction is disclosed in the original disclosure at least at Figs. 1 and 2, column 9, lines 45-55, and column 11, line 61 through column 12, line 7. In particular, Figs. 1 and 2 illustrate the manifold 96 as having a length and the specification discloses “the manifold 96 can extend

axially the length of the blancher 20.” Therefore, there is support in the original disclosure for a manifold oriented in a “lengthwise direction.”

Finally, with respect to the term “tubular” used to describe a food product receiving chamber, a tubular food product receiving chamber is shown in at least Figs. 1-3 and 5-10. Tubular refers to something “shaped like a tube.” (See The American Heritage® Dictionary of the English Language, Fourth Edition at [www.dictionary.com](http://www.dictionary.com)). As seen in Figs. 1-3 and 5-10 the food product receiving chamber is tubular. Therefore, there is support in the original disclosure for a “tubular” food product receiving chamber.

Accordingly, the rejection to claims 1-8, 25 and 47 should be withdrawn and allowance of the claims is respectfully requested.

**Claim Rejections - 35 U.S.C. §102(a)**

Claims 1-10, 12-20, 23-34 and 36-47 are rejected under 35 U.S.C. §102(a) as being anticipated by PCT Publication WO 01/26483. WO 01/26483 is an improper reference under 35 U.S.C. §102, and therefore, the rejection to claims 1-10, 12-20, 23-34 and 36-47 should be withdrawn. 35 U.S.C. §102(a) requires that a person is entitled to a patent unless “the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.”

The present reissue application is for U.S. Patent No. 6,234,066, which claims priority to U.S. Patent Application 09/419,716 filed October 14, 1999 (the ‘716 Application). Therefore, the effective priority date of the reissue application for establishing prior art is October 14, 1999. WO 01/26483 is a PCT Application published on April 19, 2001, claims priority to the ‘716 Application, and includes the same inventors and assignee as the present reissue application.

WO 01/26483 cannot be used as a prior art reference under 35 U.S.C. §102(a) because the invention set forth in the publication was not known or used by others in this country as the inventors and assignee for the present reissue application and WO 01/26483 are identical. Further, WO 01/26483 was published April 19, 2001, and therefore, does not describe in a printed publication prior to the October 14, 1999 priority date of the present reissue application. WO 01/26843 cannot be used as a prior art reference under any sub-section of 35 U.S.C. §102.

Therefore, the 35 U.S.C. §102(a) rejection to claims 1-10, 12-20, 23-34 and 36-47 should be withdrawn and allowance of the claims is respectfully requested.

**Conclusion**

In view of the above amendments and remarks, the Applicants submit that the claims, as amended, are novel and patentable over the prior art, that all the rejections to the claims have been overcome, and that the application is in condition for allowance. Early, favorable consideration is respectfully requested. Applicants kindly request that the Examiner telephone the attorney of record in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,



Gayle A. Bush  
Reg. No. 52,677

Docket No.: 062108-9085-00  
Michael Best & Friedrich LLP  
100 East Wisconsin Avenue  
Suite 3300  
Milwaukee, Wisconsin 53202-4108  
414.271.6560

## Appendix A

REISSUE APPLICATION DECLARATION BY THE ASSIGNEE		Docket Number (optional) 338.072
I hereby declare that:		
The residence, mailing address and citizenship of the inventors are stated below.		
I am authorized to act on behalf of the following assignee: <u>Lyco Manufacturing, Inc.</u>		
and the title of my position with said assignee is: <u>Chief Operating Officer</u>		
The entire title to the patent identified below is vested in said assignee.		
Inventor	David R. Zittel	Citizenship      United States
Residence/Mailing Address	155 Oak Grove Drive, Columbus, WI 53925	
Inventor	Steven W. Hughes	Citizenship      United States
Residence/Mailing Address	N8449 Coventry Lane, Beaver Dam, WI 53916	
<input checked="" type="checkbox"/> Additional inventors are named on separately numbered sheets attached hereto.		
Patent Number	6,234,066	Date of Patent Issued May 22, 2001
Title of Invention	Rotary Blancher for Processing Food Product	
I believe said inventor(s) to be the original and first inventor(s) of the subject matter which is described and claimed in said patent, for which a reissue patent is sought on the invention entitled:		
<u>Rotary Blancher for Processing Food Product</u>		
the specification of which		
<input checked="" type="checkbox"/> is attached hereto.		
<input type="checkbox"/> was filed on _____ as reissue application number _____, / _____		
and was amended on _____ (If applicable)		
I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.		
I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.		
<input type="checkbox"/> I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/028 (or equivalent) listing the foreign applications.		
I hereby believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)		
<input type="checkbox"/> by reason of a defective specification or drawing.		
<input checked="" type="checkbox"/> by reason of the patentee claiming more or less than he had the right to claim in the patent.		
<input type="checkbox"/> by reason of other errors.		

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This collection of information is required by 37 CFR 1.175. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REISSUE APPLICATION DECLARATION BY THE ASSIGNEE

Additional Inventors

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US Citizen

PTO/USPTO-52 (07-03)  
Approved for use through 01/31/2004 OMB 0851-0333

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>REISSUE APPLICATION DECLARATION BY THE ASSIGNEE</b>		Docket Number (Optional) <b>338.072</b>												
<p>At least one error upon which reissue is based is described as follows: It is believed that the scope of the broadest independent claim is too broad in view of the prior art, it is believed that certain further features could have and should have been claimed in both independent and dependent form to better clarify the scope of the invention and further distinguish the invention from the prior art. These errors were discovered during a review of the patent in light of potential litigation. [Attach additional sheets, if needed.]</p>														
<p>All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.</p>														
<p>I hereby appoint:</p>														
<p><input checked="" type="checkbox"/> Practitioners at Customer Number: <b>23598</b></p>														
<p>OR</p>														
<p><input type="checkbox"/> Practitioner(s) named below:</p>														
<table border="1"><thead><tr><th>Name</th><th>Registration Number</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr></tbody></table>			Name	Registration Number										
Name	Registration Number													
<p>as my/our attorney(s) or agent(s) to prosecute the application identified above, and to transact all business in the United States Patent and Trademark Office connected therewith.</p>														
<p>Correspondence Address: Direct all communications about the application to:</p>														
<p><input checked="" type="checkbox"/> Customer Number: <b>23598</b></p>														
<p>OR</p>														
<p><input type="checkbox"/> Firm or Individual Name</p>														
<p>Address</p>														
<p>Address</p>														
City	State	Zip												
Country														
Telephone	Fax													
<p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.</p>														
<p>Full name of person signing (given name, family name) <b>Steven W. Hughes</b></p>														
Signature	Date <b>Feb. 20, 2007</b>													
Address of Assignee	<b>Lyco Mfg. Inc., 115 Commercial Drive, Columbus, WI 53925</b>													

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## Appendix B

### SUPPLEMENTAL DECLARATION BY THE ASSIGNEE FOR REISSUE PATENT APPLICATION TO CORRECT "ERRORS" STATEMENT (37 CFR 1.175)

I hereby declare that:

The residence, mailing address and citizenship of the inventors are stated below.

I am authorized to act on behalf of the following assignee: Lyco Manufacturing, Inc. and the title of my position with said assignee is: Chief Operating Officer.

*Executive*

The entire title to the patent identified below is vested in said assignee.

Title of Invention: Rotary Blancher for Processing Food Product

Patent Number: 6,234,066

Date of Patent Issued: May 22, 2001

Inventors:

David R. Zittel	155 Oak Grove Drive, Columbus, WI 53925	US Citizen
Steven W. Hughes	N8449 Coventry Lane, Beaver Dam, WI 53916	US Citizen
Daniel D. Maupin	6445 NE Pettibone Drive, Corvallis, OR 97330	US Citizen

I believe said inventors to be the original and first inventors of the subject matter which is described and claimed in said patent, for which a reissue patent is sought on the invention entitled: Rotary Blancher for Processing Food Product, the specification of which was filed on March 2, 2004 as reissue application number 10/791,695, was amended on March 7, 2005, and is amended herewith.

I verily believe the original patent to be wholly or partly inoperative or invalid by reason of the patentee claiming more or less than he had the right to claim in the patent.

At least one error upon which reissue is based is described as follows:

It is believed that the scope of the broadest independent claim is too broad in view of the prior art, it is believed that certain further features could have and should have been claimed in both independent and dependent form to better clarify the scope of the invention and further distinguish the invention from the prior art. These errors were discovered during a review of the patent in light of potential litigation.

One error being relied upon as a basis for reissue is the word "orifice" which rendered claim 1 too broad in view of the prior art and it is believed that certain further features could have and should have been claimed as done so in amended claim 1.

Every error in the patent which was corrected in the present reissue application, and which is not covered by the prior oath(s) and/or declaration submitted in this application up to the filing of this oath/declaration arose without any deceptive intention on the part of the applicant.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
\_\_\_\_\_  
Steven W. Hughes  
Lyco Manufacturing, Inc.  
115 Commercial Drive  
Columbus, WI 53925

6-5-07  
\_\_\_\_\_  
Date